

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRIAN JUDAH MICHALEK,

Plaintiff,

v.

TOWNSEND POLICE DEPARTMENT,
et. al.,

Defendants.

CASE NO. 19-6170 RJB DWC

ORDER ON REPORT AND
RECOMMENDATION

THIS MATTER comes before the Court on the Report and Recommendation of U.S. Magistrate Judge David W. Christel. Dkt. 17. The Court has considered the Report and Recommendation, the Plaintiff's objections, and the remaining file.

The Plaintiff filed this prisoner civil rights case on December 5, 2019. Dkt. 1. His application to proceed *informa pauperis* was granted on January 24, 2020. Dkt. 5. That same day, on January 24, 2020, an order was entered regarding the Plaintiff's case. Dkt. 8. The Order

1 identified several deficiencies (problems) with the Plaintiff's Complaint except for the Plaintiff's
2 claim against Officer Daniel Rios for excessive force. *Id.* It stated that:

3 [I]f Plaintiff intends to pursue a § 1983 civil rights action in this Court, he
4 must file an amended complaint and within the amended complaint, he must write
5 a short, plain statement telling the Court: (1) the constitutional right Plaintiff
6 believes was violated; (2) the name of the person who violated the right; (3)
exactly what the individual did or failed to do; (4) how the action or inaction of
the individual is connected to the violation of Plaintiff's constitutional rights; and
(5) what specific injury Plaintiff suffered because of the individual's conduct.

7 Dkt. 8. The Court then sent the Plaintiff a copy of a form complaint and instructions. *Id.* The
8 Plaintiff was informed that if he "fails to file an amended complaint or fails to adequately
9 address the issues raised herein on or before February 24, 2020, the undersigned will recommend
10 dismissal of all claims other than the claim for excessive force against Defendant Rios." *Id.*

11 The Plaintiff sought, and received, extensions of time to file an amended complaint, with
12 the last deadline set for May 15, 2020. Dkts. 9, 12, and 14. On May 4, 2020, the Plaintiff filed a
13 motion to voluntarily dismiss the case. Dkt. 15.

14 The instant Report and Recommendation was filed on May 15, 2020. Dkt. 17. It
15 recommends dismissal of the case without prejudice in accord with the Plaintiff's voluntary
16 motion to dismiss. *Id.*

17 On May 28, 2020, the Plaintiff filed objections to the Report and Recommendation,
18 stating that he no longer wants to dismiss his case. Dkt. 18. The Plaintiff states he was under
19 duress when he filed the motion to dismiss. *Id.* He asks to be sent an additional copy of the
20 form complaint. *Id.* The Plaintiff moves for an extension of time to file the amended complaint.
21 *Id.* He indicates that he is not clear on what the term "deficiencies" means. *Id.*

22 The Report and Recommendation (Dkt. 17) should not be adopted. The Plaintiff has
23 withdrawn his motion to voluntarily dismiss this case. The case should be re-referred to Judge
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1 Christel for further proceedings, including to set a deadline for when the proposed amended
2 complaint should be filed.

3 The Clerk of the Court should be directed to resend the Plaintiff a copy of the Court's
4 January 24, 2020 Order to Show Cause or Amend (Dkt. 8), the appropriate forms for filing a 42
5 U.S.C. § 1983 civil rights complaint and for service, and the Pro Se Instruction Sheet.

6 **IT IS ORDERED:**

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- The Report and Recommendation (Dkt. 17) **IS NOT ADOPTED**; and
 - The case **IS RE-REFERRED** to Judge Christel for further proceedings, including
8 to set a deadline for when the proposed amended complaint should be filed.
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10 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
11 to any party appearing *pro se* at said party's last known address. The Clerk is further directed to
12 resend the Plaintiff a copy of the Court's January 24, 2020 Order to Show Cause or Amend (Dkt.
13 8), the appropriate forms for filing a 42 U.S.C. § 1983 civil rights complaint and for service, and the
14 Pro Se Instruction Sheet.

15 Dated this 15th day of June, 2020.

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17 ROBERT J. BRYAN
18 United States District Judge
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